bsb

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 494 OF 2006

Shri Chavgonda Sidgonda Patil ... Appellant

V/s

Shri Balgonda Sidgonda Patil ... Respondent

Mr. M.S. Lagu for the appellant.

Mr. G.S. Godbole for the respondent.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 20TH JULY, 2007.

P.C.:

1. The appellant in the present second appeal had filed a suit for partition and possession of 1/2 the suit property. The suit was dismissed. The plaintiff, therefore, filed an appeal which has also been dismissed. Both the Courts below have found that the suit property had already been partitioned and that the plaintiff and defendant were using the suit property separately. Both the Courts below have discussed the evidence on record and found that the parties have borrowed loans on their separate shares.

2. The learned advocate for the appellant submits that

the defendant claimed that the property had been partitioned by a deed of partition. He submits that if a deed of partition existed, it was for the defendant who was relying on that deed to place it on record. The oral evidence on record regarding partition should have been ignored by both the Courts below according to the learned advocate. He relies on the judgment of the Supreme Court in the case of **State Bank of India & anr. v/s Mula Sahakari Sakhar Karkhana Ltd., reported in 92006) 6 SCC 293** and in the case of **Nani Bai v/s Gita Bai Kom Rama Gunge, reported in A.I.R. 1958 SC 706** in support of his submission. The learned advocate submits that since the defendants had failed to place on record the deed of partition, the Courts below ought to have held that the earlier partition was not proved.

3. The learned advocate for the respondent relies on the judgment of the Supreme Court in the case of **Digambar Adhar Patil v/s Devram Girdhar Patil & anr., reported in A.I.R. 1995 SC 1728**, to submit that the factum of partition can be proved by oral evidence and there is no necessity for it to be effected by a registered document.

4. No error has been committed by both the Courts below.

5. There is no substantial question of law which has arisen in the present appeal.

6. Appeal dismissed.

.....